IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Revision No. 64 of 2001

Date of decision: 10.10.2007

Kaushalya Devi and another **..Petitioners**

Versus

Bhag Chand **..Respondent**

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?[1] Yes

For the Petitioners: Mr. Ramesh Thakur, Advocate

For the Respondents: Ms. Neelam Bansal, vice counsel

Deepak Gupta, J. (Oral)

This Criminal Revision is directed against the order of the learned Sessions Judge, Kullu, dated 1.12.2000 in Criminal Revision No. 5 of 1999 whereby he allowed the revision petition field by the husband, set aside the order granting maintenance in favour of the petitioners passed by the Chief Judicial Magistrate, Lahaul & Spiti at Kullu in proceedings under Section 125 Cr.P.C. and has rejected the petition filed by the petitioners.

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

Briefly stated the facts of the case are that the petitioner No.1 had initially filed a petition under Section 125 Cr.P.C. claiming maintenance at the rate of Rs.500/- per month. She had filed this petition before the Gram Panchayat, Bradha, Tehsil and District Kullu which is entitled to hear such petition under the provisions of H.P. Panchayati Raj Act. This petition was filed by Smt. Kaushalya Devi. She claimed that respondent Bhag Chand was on visiting terms with her and both had entered into a love marriage. It was further alleged that since Bhag Chand had not taken consent of his parents, she continued to reside at her parental home. Bhag Chand assured her that after he gets permission of his parents, he would take the petitioner to his house. It was also alleged that the marriage between the parties was solemnized according to the custom in the last week of January, 1994. It was further alleged that since 20.5.1994 the husband had totally deserted the wife and neglected to maintain her and hence she claimed maintenance at the rate of Rs. 500/- per month.

After Bhag Chand was summoned by the Gram Panchayat, he made a statement on oath that he had not entered into any marriage with Kaushalya Devi. He in fact raised the plea that there was long standing

enmity between the two families and a false case has been foisted upon him. In his statement, he also stated that his father Kewal Krishan had fought an election against Devi Ram, father of Kaushalya Devi for being elected member of the Gram Panchayat. Devi Ram lost the election and nurtured a grudge against his family and, therefore, a false case has been filed against him. Other evidence including the evidence of Kaushalya Devi was recorded by the Panchayat which rejected the petition of the wife.

The wife did not challenge the order of Gram Panchayat in any proceedings. She, however, filed a fresh petition under Section 125 Cr.P.C. in the court of Chief Judicial Magistrate. In this petition, Rupa @ Shilpa was also made a party. Rupa is stated to be the daughter of Kaushalya Devi out of her wedlock with Bhag Chand. The petition was prepared and presented on 17.3.1998 and in this petition it is stated that Rupa is aged 3 years. In the new petition filed, the petitioner-wife alleged that her marriage was solemnized with Bhag Chand in the year 1994 according to the local custom and after this marriage, both the parties lived together as husband and wife and from this wedlock petitioner No. 2 Rupa @ Shilpa was born. It was further averred that after

the marriage took place in the year 1994 for 2 - 2 ½ years the relations between the parties remained cordial. Thereafter the husband is alleged to have developed illicit relations with one Nepali girl and started neglecting the wife and, therefore, maintenance was claimed for each of the petitioners at the rate of Rs.500/- per month. It would be pertinent to mention that no mention was made in this petition about the earlier petition filed by the wife before the Gram Panchayat. During the course of evidence the petitioner relied upon a so called agreement dated 4.3.1996 allegedly entered into between Kaushalya Devi and Bhag Chand in which Bhag Chand has admitted that Kaushalya Devi is his wife and has agreed to keep her at his house.

The husband filed the reply to the petition and brought to the notice of the court the fact that earlier petition filed by the wife had been rejected on 6.11.1995 and this order had not been challenged. The defence taken by Bhag Chand was identical to the defence taken in the earlier proceeding.

The learned trial court mainly relied upon this document and has come to the conclusion that Kaushalya Devi is the wife and Rupa @ Shilpa is the daughter of Bhag Chand and thereafter granted maintenance

Kaushalya Devi at the rate of Rs.400/- per month and Rs.200/- per month to Rupa @ Shilpa. This order of the trial court was challenged in the revision petition and the learned Sessions Judge vide the impugned order has come to the conclusion that the claim of the petitioners is totally false and has, therefore, allowed the revision and dismissed her case. Hence the present revision petition.

I have heard Mr. Ramesh Thakur, learned counsel for the petitioners and Ms. Neelam Bansal, vice counsel for the respondent.

According to the learned counsel for the petitioners, the petitioner Kaushalya Devi was entitled to file a fresh petition on account of the fact that a subsequent development had taken place inasmuch as the agreement Ex.PW-2/A was executed by Bhag Chand. He also submits that in view of the judgment of the Apex Court in **Santosh (Smt.) Vs. Naresh Pal (1988) 8 SCC 447** the marital status of the parties having been determined by the Magistrate, the same could not be interfered with in revisional proceeding by the Sessions Judge. No doubt, normally the court while hearing a revision petition should not interfere in the finding of fact recorded by the trial Magistrate. However, the facts of the present case are very peculiar. The petitioner in her

petition under Section 125 Cr.P.C. filed before the Magistrate did not deem it fit or proper to make any reference to the earlier petition filed by her. Even if legally she was not debared from filing a second revision, it was her duty to have informed the court that earlier also she had filed a petition for grant of maintenance which had been rejected. This fact she purposely withheld from the court. The facts stated in the two petitions are totally inconsistent. In the earlier petition there is no mention of their living together. It was alleged that since 20.5.1994 Bhag Chand was not looking after the petitioner. In the second petition it is alleged that both lived together for 2½ - 3 years after the marriage which allegedly took place in 1994.

There is no mention in the second petition of the so called agreement Ex.PW-2/A in the petition. A perusal of the earlier petition shows that the proceedings were filed before the Gram Panchayat in March, 1995 and were finally disposed of by the Gram Panchayat on 6.11.1995. It is impossible to believe that soon after the petition had been dismissed, the husband would enter into the agreement Ex.PW-2/A. He has denied the execution of the agreement. It has also come on record that there is long standing litigation between the two

families and the families are not in talking terms with each other. The petitioner in the earlier petition had stated that she had entered into love marriage and even according to her no marriage ceremonies were performed. If no marriage ceremonies have been performed, how could be there a legal and valid marriage. There is no evidence to show that she and the respondent ever lived or co-habited together.

The agreement Ex.PW-2/A is allegedly scribed by PW-2 Niranjan Dass. PW-3 Dharam Chand is the alleged witness to the agreement Ex.PW-2/A. He has admitted in cross examination that when he appended his signature to the agreement, Bhag Chand was not present and he was intimated about the execution of the marriage agreement by the father of Kaushalya Devi at whose instance he signed it. In view of the statement of PW-3, it is impossible to believe the statement of PW-2, Niranjan Dass, according to whom the document was executed and witnessed at the same time. Even the signatures on the document Ex.PW-2/A to not tally with the signatures of Bhag Chand on the other documents on record.

Another factor which goes against the petitioner is that she in her petition has stated that her daughter is 3 years' old on 17.3.1998. This would mean

that the daughter was born some time in the year 1995. In 1995 proceedings were pending before the Gram Panchayat in which proceeding, the wife Kaushalya Devi had stated that since 20.5.1994 the husband has completely deserted and neglected to maintain her. The evidence of the witnesses of Kaushalya Devi were recorded on 6.11.1995 and in this evidence it is no where stated that she is pregnant or that she has had a child from the lions of Bhag Chand. If Bhag Chand and she had not co-habited from 20.5.1994 till 6.11.1995, the question of her daughter being born out the wedlock in the year 1995 did not arise. It is obvious that the story set up by her is a false and concocted one.

Keeping in view of the aforesaid fact I am of the considered view that the learned Sessions Judge has rightly decided the matter. There is no infirmity in the order of the learned Sessions Judge. The petition is, therefore, rejected.

October 10, 2007(K) (Deepak Gupta), J.